IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. OTHER TAX REF. CIVIL No. 39 of 2003

BIRLA CORPORATION LTD
V/S
UNION OF INDIA & ORS

2. OTHER TAX REF. CIVIL No. 40 of 2003

BIRLA CORPORATION LTD
V/S
UNION OF INDIA & ORS

3. OTHER TAX REF. CIVIL No. 41 of 2003

BIRLA CORPORATION LTD
V/S
UNION OF INDIA & ORS

4. OTHER TAX REF. CIVIL No. 42 of 2003

BIRLA CORPORATION LTD
V/S
UNION OF INDIA

5. OTHER TAX REF. CIVIL No. 43 of 2003

BIRLA CORPORATION LTD
V/S
UNION OF INDIA & ORS

Mr. RAMIT MEHTA for Mr. LR MEHTA, for the appellant / petitioner

Mr. VK MATHUR & Mr. RISHABH SANCHETI , for the respondent

Date of Order : 5.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

All these five appeals involve common question and being applications under Section 35H of the Central Excise

Act for calling the reference. All these applications were filed on 31.10.2003, and vide order dt. 27.11.2003 these petitions were admitted. However, this Section 35H has been amended, and is now confined in its applicability to the orders passed by the Tribunal before 1.7.2003 only. In the present case the order impugned is dated 25.3.2003, and therefore, the application has been filed for calling the reference. In the application number of questions have been formulated by the petitioner, on which it is prayed that the reference be called. However, in our view the consolidated question which arises can be summed up as under:-

> "Whether the assessee is entitled to avail modvat credit in respect of Duty paid on crushers and conveyors belts and parts thereof installed at mines for the purpose of obtaining intermediate product by crushing the limestone and then transporting it through conveyor belt from mines to the factory connecting the rope ways for being used in factory?"

Ordinarily we would have, and were required to call reference in terms of the provisions of Section 35H, but then, as the things stand, the controversy involved in the present matter stands covered by decision of Hon'ble

the Supreme Court, in Vikram Cement Vs. C.C.E., Indore reported in (2006)2 SCC-351, whereunder it has been found, that the petitioner is entitled to MODVAT credit.

That being the position, the question involved cannot be said to be any more res integra, and therefore, instead of undertaking a futile exercise of performing the formality of calling the reference, and then answer it, we think it appropriate to decide the matter at this stage itself, on the basis of the aforesaid judgment in Vikram Cement's case. It may be noticed that identical course were earlier adopted by this Court in Tax Reference Application No. 10/2002 Raj Cement Vs. U.O.I. decided on 7.12.2005 by Division Bench of this Court.

Accordingly, these applications are allowed, and the question framed as above is answered in favour of the assessee industry, and following the judgment in Vikram Cement's case it is held, that the assessee shall be entitled to MODVAT credit in terms of the judgment given in Vikram Cement's case.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/Sushil/